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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,338	11/28/2000	Hang Zhang	PAT 323 - 2	6180
26123	7590	02/08/2005	EXAMINER	
BORDEN LADNER GERVAIS LLP			LAMARRE, GUY J	
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CANADA			ART UNIT	PAPER NUMBER
			2133	
DATE MAILED: 02/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/722,338	ZHANG ET AL.
	Examiner	Art Unit
	Guy J. Lamarre, P.E.	2133

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 29 July 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 28 November 2000 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## DETAILED ACTION

0. This office action is in response to Applicants' **Amendment** of 29 July 2004.

0.1 **Claims 1-18** remain pending.

0.2 The prior art rejections and objections of record are withdrawn in response to Applicants' **Amendment**.

### Response to Arguments

1. Applicants' arguments are moot in view of new ground of rejection via **Zhu** (US Patent No. 576852) at Figs. 1-12 and col. 1 line 5 et seq.

### Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.1 Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over **Zhu et al.** (US Patent No. 5768527; June 16, 1998).

As per **Claims 1-18**, **Zhu** discloses the claimed invention because depicted, in e.g. Fig. 3, is communication protocol allowing for number of requests for retransmissions (or retransmissions counter) to be controlled in real time based, in part, on round trip delay Tr (e.g., col. 5 line 63-, col. 8 line 7-, et seq.) and packet loss rate via a QOS Manager 306 (or scheduler) along with QOS Optimizer 312.

**Zhu** provides communication protocol (e.g., col. 3 line 50 et seq.) along with retransmission metrics storing/buffer means (e.g., col. 3 line 67 et seq.), means to acknowledge need for retransmission (e.g. col. 5 line 5- , col. 6 line 45-, et seq.), e.g., '*The QoS manager (208) is operably coupled to the packet processor (204) for receiving the information on lost packets, and for sending*

*control messages, i.e., feedback messages, to the server. One kind of control message is a "retransmission request," which tells the server the identity of the lost packet and the number of copies requested for retransmission. A key aspect of the present invention is the method the QoS manager determines whether or not to request a retransmission, or how many copies to request, based at least on a predetermined bandwidth budget and the estimated information loss rate on the packet network. These decisions may also depend on the importance of the lost packet and the remaining number of allowed retransmission attempts for the packet. The robust multimedia player (206) is operably coupled to the packet processor (204) and the QoS manager (208), and will start to play out the multimedia bitstream output from the packet processor (204) after an initial delay predetermined by the QoS manager (208). The player (206) is robust in the sense that it can conceal some of the effects of unrecovered lost packets.'*

**Zhu et al.** does not mention in detail that data communications is via wireless communications, though **Zhu et al.** does not restrict data communications exclusively to the wired type. **Zhu et al.** even suggests, in col. 13 line 13 et seq., that plural modifications are envisioned without departing from the scope and spirit of the disclosed specification. Transforming wired data transfer to a wireless type is thus obvious for cost optimization and mobility.

### Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

3.1 Any response to this action should be mailed to:

Commissioner of Patents and Trademarks, Washington, D.C. 20231

**or faxed to:** (703) 872-9306 for all formal communications.

Hand-delivered responses should be brought to Customer Services, 220 20<sup>th</sup> Street S., Crystal Plaza II, Lobby, Room 1B03, Arlington, VA 22202.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Guy J. Lamarre, P.E., whose telephone number is (571) 272-3826. The examiner can normally be reached on Monday to Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert De Cady, can be reached at (571) 272-3819.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-3609.

Information regarding the status of an application may also be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Guy J. Lamarre, P.E  
Primary Examiner  
2/6/05

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